



State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095
(603) 271-3503 FAX (603) 271-2867



Lakes Region Marine Construction Inc
P.O. Box 1323
Meredith, NH 03253

Re: Smith Point Road, Tax Map 64/Lot 12-
Alton, New Hampshire

**NOTICE OF PROPOSED
ADMINISTRATIVE FINE
No. AF 02-025**

July 2, 2002

I. INTRODUCTION

This Notice of Proposed Administrative Fine and Hearing is issued by the Department of Environmental Services, Water Division ("the Division") to Lakes Region Marine Construction Inc.. pursuant to RSA 482-A and Wt 100-700. The Division is proposing that fines totaling \$6,000 be imposed against Lakes Region Marine Construction Inc. for the violations alleged below. **This notice contains important procedural information. Please read the entire notice carefully.**

II. PARTIES

1. The Department of Environmental Services, Water Division, is an administrative agency of the State of New Hampshire, having its principal office at 6 Hazen Drive, Concord, NH.
2. Lakes Region Marine Construction Inc. is a corporation having a mailing address of P.O. Box 323, Meredith, NH 03253.

III. SUMMARY OF FACTS AND LAW SUPPORTING CLAIMS

1. Pursuant to RSA 482-A, the Department of Environmental Services, Water Division ("Division") regulates dredging, filling, and construction in or on any bank, flat, marsh, or swamp in and adjacent to any waters of the state. Pursuant to RSA 482-A:11, I, the Commissioner of DES has adopted Wt 100 et seq. to implement this program.
2. Pursuant to RSA 482-A:13 and RSA 482-A:14, III, the Commissioner is authorized to impose fines of up to \$2,000 per violation for violations of the statute, of rules adopted pursuant to the statute, or of any order or permit issued under the statute. Pursuant to RSA 482-A:11, I, the Commissioner has adopted Env-C 614 to establish the schedule of fines for such violations.
3. On May 17, 2001, the Division received an application from Harron/Beane Real Estate #2 LLC ("Harron/Beane"). Harron/Beane is the owner of land located at Smith Point Road, Alton, NH, more particularly described on Town of Alton Tax Map 64 as Lot 12-1 (the Property).
4. Harron/Beane hired Lakes Region Marine Construction ("Lakes Region Marine" as the general contractor for the construction of a breakwater.

5. On October 8, 2001, Division personnel inspected the Property. The inspection found:
 - (a) The shoreline has a 10 to 15 foot wide poorly drained wetland across the length of the frontage;
 - (b) There is a 10 to 15 foot wide "band" of rocks, located below normal high water, (504.32) as measured for Lake Winnepesaukee, across the frontage; and
 - (c) There were rocks stockpiled just above the top of bank on the frontage.

6. On October 22, 2001, DES issued Permit # 2001-873 ("the Permit") to Harron/Beane to fill 1,025 square feet of lakebed for the construction of:
 - (a) Seventy linear feet of breakwater, in an "L" shaped configuration, with a 23 foot gap at the shoreline;
 - (b) A 4 foot by 40 foot cantilevered pier, with a 3 foot by 30 foot piling pier and a 6 foot by 30 foot piling pier connected by a 4 foot by 36 foot 10 inch walkway in an "E" shaped configuration;
 - (c) A 6 foot by 15 foot walkway on an average of 165 feet of frontage on Smith Point, Lake Winnepesaukee, to access the docking piers.

7. The Permit was specifically conditioned upon all work being performed in accordance with plans prepared by Lakes Region Marine, dated May 10, 2001 as received by the Division on May 17, 2001 and approved by the Division on October 22, 2001.

8. The Permit approval was subject to the following specific conditions:
 - (a) "3. Any further alteration of areas on this property that are within the jurisdiction of the DES Wetlands Bureau will require a new application and further permitting by the Bureau";
 - (b) "13. No equipment may be operated within the wetlands observed on site by DES Wetlands staff during field inspection on October 8, 2001. Nor may equipment be operated on or within the lakebed"; and
 - (c) "15. No rock may be dredged from the lakebed for any purpose."

9. On December 13, 2001, Division personnel conducted an inspection of the Property for the purpose of determining Lakes Region Marine's compliance with the Permit as issued to Harron/Beane. During the inspection, the following was observed:
 - (a) Materials stockpiled on the shoreline were being transferred to a temporary work pad on the lakebed and then transferred to the breakwater;
 - (b) Rock had been placed in the lakebed and around the work pad; and
 - (c) Rocks from the lakebed had been relocated.

10. Env-C 614.05 (b)(4) specifies a fine of \$2,000 for Class IV Violations defined as any work in public waters.

11. Env-C 614.05 (b)(5) specifies a fine of \$2,000 for Class IV Violations defined as any work within the shoreline or in a designated river.

12. Env-C 614.05 (m) specifies a fine of \$2,000 for Class IV Violations defined as failing to comply with notification, filing, or other specific permit conditions that do not fall into any of the above-listed criteria.

IV. VIOLATIONS ALLEGED AND PROPOSED ADMINISTRATIVE FINES

✓ } 1. Lakes Region Marine Construction has violated RSA 482-A:3, I and RSA 482-A:14, III by stockpiling rocks in public waters without a wetlands permit from DES, and for which the Division is seeking a fine of \$2,000.

2. Lakes Region Marine Construction has violated RSA 482-A:3, I and RSA 482-A:14, III by stockpiling rocks on the shoreline for which a site specific permit has been obtained but which is not in conformance with Permit Condition # 13, and for which the Division is seeking a fine of \$2,000.

✓ 3. Lakes Region Marine Construction has violated RSA 482-A:3, I and RSA 482-A:14, III by relocating rocks from the lakebed for which a site specific permit has been obtained but which is not in conformance with Permit Condition # 15, and for which the Division is seeking a fine of \$2,000.

The total fine being sought is \$6,000.

V. REQUIRED RESPONSE, OPPORTUNITY FOR HEARING

Pursuant to Env-C 601.06, you are required to respond to this notice. Please respond no later than July 19, 2002 using the enclosed colored form.

1. If Lakes Region Marine Construction Inc. would like to have a hearing, please sign the appearance section of the colored form and return it to the DES Legal Unit, as noted on the form. A Notice of Scheduled Hearing will be issued.

2. If Lakes Region Marine Construction Inc. chooses to waive the hearing and pay the proposed fine, please have the authorized representative sign the waiver (lower portion) and return it **with payment of the fine** to the DES Legal Unit.

3. If Lakes Region Marine Construction Inc. wishes to discuss the possibility of settling the case, please have the authorized representative sign the appearance and return it to the DES Legal Unit **and** call the DES Legal Unit to indicate Lakes Region Marine Construction Inc.'s interest in settling.

Lakes Region Marine Construction Inc. is not required to be represented by an attorney. If Lakes Region Marine Construction Inc. chooses to be represented by an attorney, the attorney must file an appearance and, if a hearing is held, submit proposed findings of fact to the person conducting the

hearing

VI. DETERMINATION OF LIABILITY FOR ADMINISTRATIVE FINES

Pursuant to Env-C 601.09, in order for any fine to be imposed after a hearing, the Division must prove by a preponderance of the evidence, that Lakes Region Marine Construction Inc. committed the violations alleged and that the total amount of fines sought is the appropriate amount under the applicable statute and rules. Proving something by a preponderance of the evidence means that it is **more likely than not** that the thing sought to be proved is true.

If the Division proves that Lakes Region Marine Construction Inc. committed the violations and that the total amount of fines sought is the appropriate amount under the applicable statute and rules, then the fine sought will be imposed, subject to the following:

Pursuant to Env-C 601.09(c), the fine will be **reduced by 10%** for each of the circumstances listed below **that** Lakes Region Marine Construction Inc. **proves, by a preponderance of the evidence,** applies in this case:

The violation was a one-time or non-continuing violation, **and** Lakes Region Marine Construction Inc. did not know about the requirement when the violation occurred, **and** the violation has not continued or reoccurred as of the time of the hearing, **and** any environmental harm or threat of harm has been corrected, **and** Lakes Region Marine Construction Inc. did not benefit financially, whether directly or indirectly, from the violation.

2. At the time the violation was committed, Lakes Region Marine Construction Inc. was making a good faith effort to comply with the requirement that was violated.
3. Lakes Region Marine Construction Inc. has no history of non-compliance with the statutes or rules implemented by DES or with any permit issued by DES or contract entered into with DES.
4. Other information exists which is favorable to Lakes Region Marine Construction Inc.'s case which was not known to the Division at the time the fine was proposed.

*****IMPORTANT NOTICE*****

An administrative fine hearing is a formal hearing. Any hearing will be tape recorded, and all witnesses will testify under oath or affirmation. At the hearing, the Division will present testimony and evidence to try to prove that Lakes Region Marine Construction Inc. committed the violation(s) alleged above and that the fine(s) should be imposed. **The hearing is Lakes Region Marine Construction**

Inc.'s opportunity to present testimony and evidence that Lakes Region Marine Construction Inc. did not commit the violation(s) and/or that the fine(s) should not be imposed, or that the fine(s) sought should be reduced.

If Lakes Region Marine Construction Inc. has any evidence, such as photographs, business records or other documents, that Lakes Region Marine Construction Inc. believes show that Lakes Region Marine Construction Inc. did not commit the violation(s) or that otherwise support Lakes Region Marine Construction Inc.'s position, Lakes Region Marine Construction Inc. should bring the evidence to the hearing. Lakes Region Marine Construction Inc. may also bring witnesses (other people) to the hearing to testify on Lakes Region Marine Construction Inc.'s behalf.

If Lakes Region Marine Construction Inc. wishes to have an informal meeting to discuss the issues, Lakes Region Marine Construction Inc. must contact the DES Legal Unit at (603) 271-6330 to request a prehearing conference.

Information regarding this proposed fine may be made available to the public via the DES Web page (www.state.nh.us.des). If Lakes Region Marine Construction Inc. has any questions about this matter, please contact the DES Legal Unit, at (603) 271-6330.


COPY

Harry T. Stewart, P.E., Director
Water Division

Enclosure (NHDES Fact Sheet #CO-2000)

cc Gretchen Rule, Administrator, DES Legal Unit
Susan Alexant, DES Rules & Hearings Attorney
Harry T. Stewart, P.E., Director
Marjory Swope, NHACC
Jennifer Patterson, Sr. Asst. Attorney General, EPB, N.H. Dept of Justice
Alton Conservation Commission
Alton Board of Selectmen